

Department of Veterans Affairs

§ 21.42

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

Authority: 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Pub. L. 101-508, 104 Stat. 1388-347; sec. 404(b), Pub. L. 102-568, 106 Stat. 4338, as amended by sec. 602, Pub. L. 103-446, 108 Stat. 4671.

[75 FR 3164, Jan. 20, 2010]

PERIODS OF ELIGIBILITY

§ 21.41 Basic period of eligibility.

(a) *Time limit for eligibility to receive vocational rehabilitation.* (1) For purposes of §§ 21.41 through 21.46, the term *basic period of eligibility* means the 12-year period beginning on the date of a veteran's discharge or release from his or her last period of active military, naval, or air service, and ending on the date that is 12 years from the veteran's discharge or release date, but the beginning date may be deferred or the ending date extended under the sections referred to in paragraph (b) of this section. (See §§ 21.70 through 21.79 concerning duration of rehabilitation programs.)

(2) Except as provided in paragraph (b) or (c) of this section, the period during which an individual may receive a program of vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 is limited to his or her basic period of eligibility.

(b) *Deferral and extension of the basic period of eligibility.* VA may defer the beginning date of a veteran's basic period of eligibility under § 21.42. VA may extend the ending date of a veteran's basic period of eligibility under § 21.42

(extension due to medical condition); § 21.44 (extension for a veteran with a serious employment handicap), § 21.45 (extension during a program of independent living services and assistance), and § 21.46 (extension for a veteran recalled to active duty).

(Authority: 38 U.S.C. 3103)

(c) *Servicemember entitled to vocational rehabilitation services and assistance before discharge.* The basic period of eligibility for a servicemember who is entitled to vocational rehabilitation services and assistance under 38 U.S.C. chapter 31 for a period before discharge does not run while the servicemember remains on active duty, but begins on the date of discharge from the active military, naval, or air service. The period of eligibility requirements of this section are not applicable to provision of vocational rehabilitation services and assistance under chapter 31 during active duty.

(Authority: 38 U.S.C. 3102, 3103)

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§ 21.42 Deferral or extension of the basic period of eligibility.

The basic period of eligibility does not run as long as any of the following reasons prevents the veteran from commencing or continuing a vocational rehabilitation program:

(a) *Qualifying compensable service-connected disability(ies) not established.* The basic period of eligibility does not commence until the day VA notifies a veteran of a rating determination by VA that the veteran has a qualifying compensable service-connected disability under § 21.40.

(Authority: 38 U.S.C. 3103(b)(3))

(b) *Character of discharge is a bar to benefits.* (1) The basic period of eligibility does not commence until the veteran meets the requirement of a discharge or release under conditions other than dishonorable. (For provisions regarding character of discharge, see § 3.12 of this chapter.)

(2) If VA has considered a veteran's character of discharge to be a bar to benefits, the basic period of eligibility

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commences only when one of the following happens:

(i) An appropriate authority changes the character of discharge or release; or

(ii) VA determines that the discharge or release was under conditions other than dishonorable or that the discharge or release was, but no longer is, a bar to benefits.

(3) If there is a change in the character of discharge, or the discharge or release otherwise is determined, as provided in paragraph (b)(2) of this section, not to be a bar to benefits, the beginning date of the basic period of eligibility will be the effective date of the change or VA determination.

(Authority: 38 U.S.C. 3103(b)(2))

(c) *Commencement or continuation of participation prevented by medical condition(s).* (1) The basic period of eligibility does not run during any period when a veteran's participation in a vocational rehabilitation program is determined to be infeasible for 30 days or more because of any medical condition(s) of the veteran, including the disabling effects of chronic alcoholism (see paragraphs (c)(2) through (c)(5) of this section).

(2) For purposes of this section, the term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations that:

(i) Have been diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Have been determined to prevent the affected veteran from beginning or continuing in a program of vocational rehabilitation and employment.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, or chronic alcohol abuse, in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injuries sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication are not considered disabling effects of chronic alcoholism. An injury itself, however, may prevent com-

mencement or continuation of a rehabilitation program.

(5) For purposes of this section, after November 17, 1988, the disabling effects of chronic alcoholism do not constitute willful misconduct. See 38 U.S.C. 105(c).

(6) If the basic period of eligibility is delayed or interrupted under this paragraph (c) due to any medical condition(s) of the veteran, it will begin or resume on the date a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) notifies the veteran in writing that the CP or VRC has determined, based on the evidence of record, that participation in a vocational rehabilitation program is reasonably feasible for the veteran.

(Authority: 38 U.S.C. 3103(b)(1))

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§ 21.44 Extension of the basic period of eligibility for a veteran with a serious employment handicap.

(a) *Conditions for extension.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the basic period of eligibility of a veteran with a serious employment handicap when the veteran's current employment handicap and need for rehabilitation services and assistance necessitate an extension under the following conditions:

(1) *Not rehabilitated to the point of employability.* The veteran has not been rehabilitated to the point of employability; or

(Authority: 38 U.S.C. 3103(c))

(2) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, but currently meets one of the following three conditions:

(i) One or more of the veteran's service-connected disabilities has worsened, preventing the veteran from working in the occupation for which he or she trained, or in a related occupation;

(ii) The veteran's current employment handicap and capabilities clearly show that the occupation for which the veteran previously trained is currently unsuitable; or

(iii) The occupational requirements in the occupation for which the veteran